

IN THE HIGH COURT OF ~~THE STATE OF KERALA~~ AT ERNAKULAM.

Present:-

The Hon'ble the Chief Justice Mr. K.T. Koshi
and
The Hon'ble Mr. Justice C.A. Vaidialingam.

A.S. No. 7 of 1955(3).

O.S. No. 90 of 1951 of the Kavalikara District Court.

Appellant:- Plaintiff.

Govindan Nair, residing at Chettiyarezhathu, Unperhattu Mari,
Thekkakara Pakuthy from Keezhalloor Komelezhathu Kaithathesdam
Mari, Kannamangalam Pakuthy.

By Advocate Shri K.P. Abraham.

Respondent:- Defendants.

1. Government of Travancore-Cochin represented by the Chief Secretary, Trivandrum.
2. G. Nair, District Superintendent of Police, Kottayam from Komelezhathu Valavada Veedu, Kaithathesdam Mari, Kannamangalam Pakuthy.

Respondent 1 by Government Pleader Shri A.N. Marayana Nair
Respondent 2 by Advocate Shri C.N. Kuruvilla.

This Appeal Suit having been finally heard on 20-6-1956, this court on the same day delivered the following:-

JUDGMENT.

The appeal arises out of a suit to set aside a Government Order annulling a Revenue sale. The sale took place on 27-11-1126 and though the District Collector declined to interfere when defendant 2 applied before him to set it aside on revision by defendant 2 Government set aside the sale on 16-2-1949 (8-7-1124). The present suit to set aside the Government order was instituted only on 6-9-1951 long after the statutory period of one year prescribed by Section 51 of the Travancore Revenue Recovery Act(I of 68) had elapsed. The lower court dismissed the suit, but not on the ground of limitation. Indeed the issue relating to limitation (No. 7) was not pressed by the defendants and the lower court did not therefore record any finding with respect to it. We are not however bound by the defendants waiving the plea; the plea is one which cannot be waived. The appeal must in the result fail on this short ground. But before dismissing it we should not fail to mention that the present plaintiff had filed a review before Government against their

order dated 16-8-1949 and that the order dismissing the review was passed only on 20-1-1951. The suit is ~~within~~ within one year from that date, but there is no statutory provision for a review and a party cannot be allowed to extend the period of limitation by seeking to review orders passed by competent authority under their statutory ~~powers~~ powers. The period of one year prescribed by Section 51 would become negatory if parties are allowed to do that. ~~The~~ We therefore dismiss the appeal, but make no order for costs of the appeal as the defendants had abandoned the plea as to limitation before the lower court. Parties will therefore bear their respective costs of the appeal.

Order accordingly.

Sd/- K.P. Kosal, C.J.,

Sd/- C.A. Vaidialingan, J.

20-6-1958..

(True Copy).

S. Samundaramban

Asst. Registrar.

Company by
K. K. K.

1-8-58